

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

DALE BECKHAM,

Petitioner,

-vs-

ERNIE MOORE, Warden,

Respondent.

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Case No. 3:04-cv-138

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District Judge Walter Herbert Rice  
Chief Magistrate Judge Michael R. Merz

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**DECISION AND ORDER DENYING MOTION TO COMPEL**

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This habeas corpus action is before the Court on Petitioner's Motion to Compel Respondent to provide the Court with a transcript of a 911 call which is alleged to be material to the case and to provide both Petitioner and the Court with a certified transcript of the preliminary hearing in this case. Petitioner asserts the jury was provided with transcripts of the 911 call but that the transcripts were collected by the prosecutor after trial. With respect to the preliminary hearing, he merely alleges that it is necessary for a complete record.

This case is presently pending before Judge Rice on Petitioner's Objections (Doc. No. 12) to the Magistrate Judge's Report and Recommendations (Doc. No. 11) which recommended that the Petition be dismissed with prejudice. Thus the case has been fully considered on the merits. Neither item sought in discovery appears to be relevant to the claims Petitioner has made. Thus Petitioner has not shown the good cause required to obtain discovery. Rule 6(a), Rules Governing §2254 Cases; *Bracy v. Gramley*, 520 U.S. 899, 117 S. Ct. 1793, 138 L. Ed. 2d 97 (1997); *Harris v. Nelson*,

394 U.S. 286, 89 S. Ct. 1082, 22 L. Ed. 2d 281 (1969); *Byrd v. Collins*, 209 F. 3<sup>rd</sup> 486, 515-16 (6<sup>th</sup> Cir. 2000).

The Motion to Compel is denied.

May 11, 2005.

s/ **Michael R. Merz**  
Chief United States Magistrate Judge